Smith v. *Kaufman*, 100 Ala. 408. In *Roy* v. *King's Estate*, 55 Mont. 567, the plaintiff brought suit for $300. Defendant filed a general denial except as to $100 which he admitted he owed plaintiff. Plaintiff introduced evidence and was nonsuited. Upon appeal it was held that plaintiff should have received judgment for $100, for the admission in the answer that part of the plaintiff's claim was justly due entitled plaintiff to judgment for that amount, without regard to the value of the evidence as to the balance. The principal case is supported by prior decisions of the same court, but it is clearly out of line with the weight of authority which permits the trial to proceed with the admissions in the pleading, and gives the plaintiff judgment for the amount admitted, leaving the question as to the balance to the jury.

PLEADING—EQUITABLE REPLY TO LEGAL DEFENSE.—A federal statute (ACT OF MARCH 3, 1915; JUD. CODE, § 274b; COM. ST., § 1251b) provides "that in all actions at law equitable defenses may be interposed by answer, plea or replication without the necessity of filing a bill on the equity side of the court." Plaintiff sued at law on a contract for commissions, to which the defendant pleaded a settlement and release. To this the plaintiff replied fraud by defendant in procuring the release, and tendered back the amount received in the settlement. On a demurrer to this replication defendant urged that it was not authorized and the fraud should have been availed of by a bill in equity to set aside the release. *Held*, that the replication was good. *Plews* v. *Burrage* (C. C. A., 1st Cir., 1921), 274 Fed. 881.

This opinion seems to be in accordance with the very language of the statute above quoted. But there is another sentence in the same section which provides that "in case affirmative relief is prayed in such answer or plea the plaintiff may file a replication." If this means that no replication can be filed unless the plea or answer prays affirmative relief, then such a replication as that in the principal case is unauthorized because the answer there contained a mere defense. In *Keatley* v. *U. S. Trust Co.* (C. C. A., 2nd Cir., 1918), 249 Fed. 296, the court took this latter view and held that a replication exactly like the one in the principal case was bad. We thus have two opposite decisions on the same question, due to the emphasizing of two different features of the same statute. The *Plews* case emphasized the liberal provision, which was intended to prevent circuity of action. The *Keatley* case emphasized the conservative provision which impliedly restricted the use of a replication to cases where affirmative relief was asked for in the plea or answer. North Carolina, in the CODE of 1883, § 245, gave a defendant the right "to set forth by answer as many defenses and counterclaims as he may have, whether they be such as have been theretofore denominated legal, equitable, or both," and a plaintiff in his reply "to allege * * * any new matter not inconsistent with the complaint, constituting a defense to new matter in the answer." This has been held broad enough to allow an equitable reply to a legal defense, conformably to the spirit of procedural reform manifested in codes of pleading. *Bean* v. *R. R.*, 107 N. C.

731. It is interesting to note that the court which rendered the conservative opinion, contrary to the general spirit of the Code, sat in New York, a code state, while the liberal view was announced in the New England circuit, which has generally retained the common law procedure. Possibly this whole discussion in these federal cases was unnecessary, for it has frequently been held, in the absence of any statute whatever, that such a replication raises a perfectly good issue in an action at law. *M'Henry* v. *M'Henry & Co.*, 14 Leg. Int. 292 (Pa.); *Friedburg* v. *Knight*, 14 R. I. 585; *Piper* v. *B. & M. R. R.*, 75 N. H. 228; *U. P. Ry. Co.* v. *Harris*, 158 U. S. 326; *Memphis St. Ry. Co.* v. *Giardino*, 116 Tenn. 368; 1 CHITTY, PLEADING, *553. Compare *Holbrook, Cabot & Rollins Corp.* v. *Sperling*, 239 Fed. 715. On the general subject of equitable defenses in actions at law see "Equitable Defenses under Modern Codes," by E. W. Hinton, 18 MICH. L. REV. 717.

QUO WARRANTO—FORMER DECISION WITH DIFFERENT RELATORS RES ADJUDICATA.—A proceeding in the nature of *quo warranto* was begun in the name of the state on the relation of certain individuals to question the right of a municipal corporation to exist. The defendant city pleaded a former judgment in its favor, in an action commenced by different relators seeking dissolution of the city for similar reasons. *Held*, the judgment in the former action was *res adjudicata* as to the cause of action involved in this suit. *Town of Tallassee* v. *State* (Ala.), 89 So. 514.

If the former proceedings resulted in a judgment on the merits upon the same subject matter, and the parties were the same in the two suits, the former judgment was *res adjudicata* in the later action. 9 ENC. PL. & PR. 611. The principal case agrees with almost unanimous authority that in proceedings in the nature of *quo warranto* the public is the real and the relator a nominal party; a difference in relators then does not result in a difference in the real party interested in the litigation. *State* v. *Harmon*, 31 Oh. St. 250; *Wright* v. *Allen*, 2 Tex. 158; *McClesky* v. *State*, 4 Tex. Civ. App. 322; *Shumate* v. *Supervisors of Fauquier Co.*, 84 Va. 574; *State* v. *Ry. Co.*, 135 Ia. 694; *State* v. *Superior Court*, 70 Wash. 670; *State* v. *Willis*, 19 N. D. 209; *Ashton* v. *City of Rochester*, 133 N. Y. 187; *City Council of Montgomery* v. *Walker*, 154 Ala. 242; *People* v. *Harrison*, 253 Ill. 625. *State* v. *Cincinnati Gas, Light and Coke Co.*, 18 Oh. St. 262, *contra* (*semble*). In a few states a claimant to public office is given a remedy analogous to that of *quo warranto* proceedings, but purely to test his right to the office as against the incumbent. 23 AM. & ENG. ENC. OF LAW (Ed. 2), 616, and cases cited. A judgment in such an action is not *res adjudicata* should another claimant attempt to exercise the same remedy or the state bring *quo warranto* to test the occupant's right to the office. *Modlin* v. *State*, 175 Ind. 511; ANN. CAS. 1913 C 671, note.

SALES—WHAT CONSTITUTES GOOD FAITH IN PURCHASE OF CHATTELS.—B purchased an automobile from P, giving therefor a forged check, and subsequently sold the car for value to D, with whom he was acquainted.